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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF N.T., and)

R.T., Father,)

Appellant-Respondent,)

vs.)

TIPPECANOE COUNTY DEPARTMENT)
OF CHILD SERVICES,)

Appellee-Petitioner.)

No. 79A02-0712-JV-1116

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0706-JT-114

April 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

R.T. (“Father”) appeals the involuntary termination of his parental rights to his son, N.T.

We affirm.

ISSUE

Whether the trial court’s judgment terminating Father’s parental rights to N.T. is supported by clear and convincing evidence.

FACTS

Father is the biological father of N.T., born on November 20, 2000. C.S. (“Mother”) is the biological Mother of N.T. as well as N.T.’s two younger half-siblings, fathered by B.S. III. On December 15, 2005, all three children were taken into protective custody as a result of N.T.’s two-year-old younger brother testing positive for methamphetamine and cocaine. On December 27, 2005, the Tippecanoe County Department of Child Services (“TCDCS”) filed an amended petition alleging N.T. and his siblings were children in need of services (“CHINS”). The CHINS petition alleged all three children’s physical or mental condition was “seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the children’s parent.” Pet. Ex. 1A. On February 14, 2006, during the initial hearing, Father admitted to the allegations of the CHINS petition. The trial court thereafter determined N.T. and his two half-siblings to be CHINS, finding that:

[I]t is contrary to the welfare of the children . . . to remain in [B.S. III.’s] and [Mother’s] custody without the coercive intervention of the court. [B.S. III] did not take the requested hair screen. [B.S. IV’s]. age 2, hair screen was positive for Methamphetamine and Cocaine. It was reported to

the investigator that [B.S. IV] had “gotten into” cocaine or meth during a party and that [B.S. III] “held down” [B.S. IV] while the drugs worked through his system. Reportedly, [B.S. III] did not take [B.S. IV] to the hospital for treatment for fear he would go to jail

[Father] . . . of [N.T.] is currently incarcerated through the Department of Corrections (sic) and his current out date is 2009.

Appellant’s App. 94. The trial court thereafter ordered all three children removed from the care of Mother, Father, and B.S. III, and issued a Parental Participation Decree. The Parental Participation Decree ordered all three parents to participate in various services in order to achieve reunification with their children. The Participation Decree specifically ordered Father to “[p]articipate in any and all services offered through the Department of Corrections (sic) such as parenting class[es], AN/AA meetings, GED, etc.” and to “[c]ontact [the] case manager immediately upon release to schedule assessments and any possible recommended services.” Appellant’s App. 96.

Initially, N.T. was placed in relative foster care with his maternal grandmother, M.T. On August 28, 2006, N.T. was removed from M.T. and placed with Mother on a trial in-home placement, but was again removed from Mother’s care in March 2007. On March 19, 2007, B.S. IV was placed with his siblings, who had already been placed with their paternal grandparents. The grandparents already knew N.T. and had participated in N.T.’s life from the time he was seven-months-old. N.T.’s placement with the grandparents was affirmed by the trial court on March 28, 2007.

The TCDCS filed an amended motion to terminate Father’s parental rights on June 12, 2007. The fact-finding hearing on the termination petition was held on August 17, 2007. Father appeared, by telephone, at the hearing and was represented by counsel. At

the commencement of the termination hearing, Mother agreed to voluntarily relinquish her parental rights to all three children and was dismissed from the case.

At the fact-finding hearing, Dr. Judith Anderson, child psychologist, testified regarding her experience counseling N.T. Dr. Anderson testified that N.T. “is a little boy who has been traumatized tremendously by the disruptions in his world.” (Tr. 87-88). She went on to describe N.T. as “an extremely anxious child” and stated that he needs “permanency, he needs stability. I believe that he needs a family who will stay with him, take care of him until he’s all grown up at this point.” (Tr. 88). Dr. Anderson further testified that N.T. has been “bounced around between various family members and it has been sometimes good and sometimes not good, but it had definitely been disruptive.” (Tr. 88). When questioned as to her opinion on how waiting for another two or three years for Father to be released from jail would impact N.T., based on her experience and her work with N.T., Dr. Anderson responded:

[N.T.] has responded to environmental issues throughout the time I’ve worked [with] him. . . . And when he’s in unstable situations or situations that he doesn’t know what’s going to happen . . . he is extremely anxious. And that anxiety surfaces in tremendous behavioral problems, he’s got a lot of compulsive behaviors, a lot of obsessive stuff. . . . [B]ut he very much is worried about life. . . . More so than many children at his age, [he is] very traumatized by disruptions and as we’ve learned a great deal of abuse [has occurred] in his life. . . . I would expect that another year even would exacerbate the trauma that we’ve already exposed him to and that his parents have exposed him to as a result of their life choices tremendously. And at some point we get to a point where we can’t fix it because a child doesn’t trust, doesn’t feel safe and this little guy has already been held up for an extremely long period of time, not just the time that he’s been in foster care, but longer than that in terms of the traumas that he’s experienced in his life and the abuse that he’s experienced. And we know that when kids are in those kinds of situations they sort of stop their development, they stop their emotional psychological development I

think he would be terribly damaged, he's already a very damaged little boy, I think he would be extremely damaged and if we're talking two to three years I think we're talking absolutely irreparably damaged."

(Tr. 88-90).

When questioned regarding why it would not be in N.T.'s best interests to wait for his Father to be released from jail, TCDCS caseworker Casey McClaine responded:

[N.T.] deserves permanency now; he's in limbo; he has questions about who his mommy and daddy will be for the rest of his life. He has questions about where he's going to go to school. You know, who he's going to play with, where he's going to sleep, where he's going to sleep for the rest of his life. He's six years old, he's got a lot of issues, he's got a lot of anxiety, he stutters when he's upset and scared. You know at the time that he was removed from [Mother] he wasn't eating well, he wasn't sleeping through the night, he was a mess. So we're looking at a six year old boy [who's] got so many anxiety issues and waiting for 23 or 24 months in a foster home when the foster parents can't tell him, "Oh you're going to be with us forever," that's just continuing this state of limbo for him and that is just not good for his well being. He needs permanency.

(Tr. 49). Court Appointed Special Advocate ("CASA") Sharon Cornell also testified that she felt termination of Father's parental rights to N.T. was in the child's best interests, stating that N.T. had "shared with [her][,] as Dr. [Anderson] said[,] he wants to know when he's going to get a new mommy and daddy and have a forever home." (Tr. 103).

On August 20, 2007, the trial court issued its judgment terminating Father's parental rights.

DECISION

Father asserts the judgment terminating his parental rights to N.T. is not supported by clear and convincing evidence. Specifically, Father asserts that the TCDCS failed to prove by clear and convincing evidence that the conditions resulting in N.T.'s removal

would not be remedied, or that continuation of the parent-child relationship poses a threat to N.T.'s well-being. We cannot agree.

Initially, we note that this Court applies a highly deferential standard when reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* Although the trial court appropriately made specific findings pertaining to the elements set forth in I.C. § 31-35-2-4(b)(2), the judgment is primarily general in nature. When the trial court enters a general judgment, we will affirm that judgment on any legal theory the evidence supports. *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007). We will reverse a judgment as clearly erroneous if we review the record and have a “firm conviction that a mistake has been made. *Id.*

“The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

- (A) [o]ne (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- * * *
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and,
- (D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Father's sole contention on appeal is that the TCDCS failed to prove by clear and convincing evidence both that the conditions resulting in N.T.'s removal and continued placement outside the home will not be remedied, and that continuation of the parent-child relationship poses a threat to N.T.'s well being.

Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, so the trial court need find by clear and convincing evidence only one of the two requirements of subsection (B). *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied*. Accordingly, we first review whether continuation of the parent-child relationship poses a threat to N.T.'s well being.

Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*. The trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Here, the record reveals that Father, who has a lengthy criminal history, was in jail when N.T. was born, was incarcerated throughout the duration of the CHINS and termination proceedings, and will not, presently, be eligible for release until August of 2009 at the earliest.¹ The overwhelming consensus among the various services providers, including N.T.'s psychologist, caseworker and CASA, is that N.T. will suffer irreparable emotional and mental harm if forced to wait for Father to be released from prison and to participate in services in hopes that he will eventually become a suitable parent. Dr. Anderson testified that N.T. has been "traumatized tremendously" by the disruptions in his world, that he "needs stability[.]" and that he would be "absolutely irreparably damaged" if forced to wait even one year for a stable home (Tr. 88, 90). Similarly, TCDSCS caseworker Casey McClaine testified that continuing in his current "state of limbo" is not good for his well being. (Tr. 49). The CASA also testified that she felt termination of Father's parental rights was in N.T.'s best interest.

As stated previously, a trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination; and,

¹ During Father's incarceration, he has amassed numerous violations of Department of Correction rules, which could further impact upon his expected release date, if continued.

parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *K.S.*, 750 N.E.2d at 836-7. Based on the foregoing, we conclude the trial court's finding that continuation of the parent-child relationship poses a threat to N.T.'s well being is supported by clear and convincing evidence.² Accordingly, we find no error.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.

² Having determined the trial court's finding that continuation of the parent-child relationship poses a threat to N.T.'s well being is supported by clear and convincing evidence, we need not address whether the TCDCS failed to prove that the conditions resulting in N.T.'s removal would not be remedied.